

# Exhibit 1

**COPY**

SEP - 7 2017



MICHAEL K. JEANES, CLERK  
C. LOPEZ  
DEPUTY CLERK

**SURRANO LAW OFFICES**  
Attorneys at Law

7114 E. Stetson Dr., Suite 300  
Scottsdale, Arizona 85251  
Phone: (602) 264-1077  
Fax: (602) 264-2213

Charles J. Surrano III (007732) cjs@surranolawfirm.com  
John N. Wilborn (013714) jnw@surranolawfirm.com  
AZTurboCourt e-service distribution: [surranolaw@gmail.com](mailto:surranolaw@gmail.com)  
Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

Diana Okabayashi, an Arizona Resident,

Plaintiff,

vs.

The Travelers Home and Marine Insurance  
Company, a Foreign Insurer,

Defendant.

Case No. CV 2017-010871

**COMPLAINT**

Plaintiff, Diana Okabayashi ("Plaintiff"), for her Complaint against the named Defendant alleges and states as follows:

1. Plaintiff is an Arizona Resident and for all acts alleged herein resided in the State of Arizona, County of Maricopa.
2. That Defendant, The Travelers Home and Marine Insurance Company (hereinafter, "Travelers") is a duly organized and existing corporation, existing by the virtues of the laws of the State of Arizona and is authorized to transact insurance business in the State of Arizona and for all acts alleged herein did and continues to transact business in the State of Arizona.

3. That Travelers caused events in the State of Arizona, County of Maricopa, out of which Plaintiff cause of action arises.
4. That the Plaintiff was the named insured under an insurance policy issued by Travelers that included bodily injury and uninsured (UM) and underinsured (UIM) motorist coverages in the limit amounts of \$100,000 per person and \$300,000 per occurrence.
5. That Travelers then issued Policy No. 9426550191012.
6. That during the policy period, on April 16, 2012, Plaintiff was driving when she was involved in a serious collision.
7. That Plaintiff suffered serious soft tissue injuries and an aggravation of her serious and chronic pre-existing conditions.
8. That at the time of the collision, the at-fault driver, Brandy Jean Holbrook, was underinsured.
9. That through attorney Geoffrey Trachtenberg of Levenbaum Trachtenberg, PLC, Plaintiff made a policy limits demand on Holbrook.
10. That the insurer for Holbrook tendered the policy limit of \$25,000.
11. That Plaintiff incurred medical bills as follows:

DATES OF SERVICE	PROVIDER	AMOUNT
04/16/12	City of Phoenix ETS	\$ 768.70
04/16/14	Banner Good Samaritan Medical Center	\$ 20,169.00
04/16/12	Emergency Professional Services	\$ 725.00
04/16/12	AZ Banner Hospital Based Clinics	\$ 780.00
04/17/12	Jay R. Long, MD	\$ 185.00
04/17/12 – 09/11/14	Arizona Neurological Institute	\$ 48,809.35
04/26/12 – 05/02/13	Jill Zweig, DO	\$ 667.50
04/26/12 – 06/15/15	Simon Medical Imaging	\$ 5,978.08
05/04/12	MVP Orthopedics & Sports Medicine	\$ 941.00
08/07/12 – 03/06/13	Banner Thunderbird Surgery Center	\$ 36,634.00

03/28/13 – 06/26/13	Metro Physical Therapy	\$ 3,455.00
03/10/14 – 06/23/16	The Core Institute	\$ 43,406.34
<b>TOTAL</b>		<b>\$162,518.97</b>

12. That Plaintiff suffered and continues to suffer from headaches, and head and back pain.

13. That the tendering of policy limits created a situation in which Plaintiff was entitled to a claim for UIM benefits.

14. That Plaintiff, through her attorneys, made a demand for policy limits of \$100,000 for UIM coverage on Defendant Travelers on March 12, 2015.

15. That any reasonable insurer would have tendered policy limits of \$100,000 within 30 days of receiving the Plaintiff's demand letter.

16. That Travelers never made any offer to the Plaintiff.

17. That thereafter, Plaintiff, through her attorneys, expressly informed Travelers' adjuster that she would be filing a lawsuit. Plaintiff was forced to file a lawsuit in the Maricopa County Superior Court, incurring filing fees and service of process fees, in order to receive her contractual UIM benefits. That matter was later removed by Travelers to Federal District Court.

18. That Travelers forced the Plaintiff to arbitration by filing a motion to dismiss, and without having demanded arbitration prior to the filing of the lawsuit.

19. That when the court granted the motion to dismiss and ordered the Plaintiff and Travelers to go to arbitration, Travelers filed a motion to recover its attorneys' fees and costs from the Plaintiff. However, Travelers knew, or should have known, that the Travelers' policy expressly granted Plaintiff the right to file a lawsuit when Travelers had not requested arbitration. Travelers falsely averred to Federal District Court that arbitration was a condition precedent to filing a



1 lawsuit, and falsely accused Plaintiff of breaching the contract by filing the  
2 lawsuit rather than agreeing to arbitration (that was never requested by Travelers  
3 prior to the filing of the lawsuit).

4 20. That Travelers argued that Plaintiff was not hurt in the accident and that all her  
5 injuries pre-existed the accident.

6 21. That Travelers asked Dr. Harry S. Tamm to perform a medical exam of the  
7 Plaintiff.

8 22. That Travelers still would not make an offer.

9 23. That Travelers' only argument at the arbitration was that Plaintiff was not  
10 entitled to \$100,000 in UIM benefits, and that if Plaintiff were to receive an  
11 award, that is should be less than the amount of her medical specials that  
12 Travelers had admitted were reasonable, necessary and causally related the  
13 subject claim.

14 24. That at the arbitration Travelers called its only witness, Dr. Tamm, to testify  
15 telephonically, and otherwise, only presented reports from doctors.

16 25. That the arbitrators awarded the Plaintiff \$175,000, thereby entitling her to  
17 policy limits of \$100,000.

18 26. The arbitration award is also evidence that Travelers' evaluation of the Plaintiff's  
19 claim was patently unreasonable

20 27. That the Plaintiff was forced to wait more than 4 years from the accident for her  
21 policy benefits, forced to jump through hoops and economically suffer without  
22 much needed policy benefits.

23 **COUNT ONE: BAD FAITH**

24 28. That the Plaintiff hereby repeats, realleges and restates each and every allegation  
25 of the foregoing as if more fully set forth herein Count Two of Plaintiff's  
26 Complaint.

1 29. That the policy of insurance issued by Travelers constitutes a contract of  
2 insurance.

3 30. That by virtue of the actions, conduct and omissions, in the investigation,  
4 adjudication, administration and delay of the Plaintiff's claim for benefits,  
5 Travelers acted with reckless disregard of its conduct and acted in an  
6 unreasonable manner constituting a breach of the duty of good faith and fair  
7 dealing or, bad faith.

8 31. That, among other things, Travelers' acts of bad faith include but are not limited  
9 to:

- 10 a. Failing to adequately, promptly and fairly investigate the issues of the
- 11 UIM claim and promptly pay a reasonable amount or make a
- 12 reasonable offer;
- 13 b. Arbitrarily deciding to offer no money as a full UIM settlement offer
- 14 to the Plaintiff;
- 15 c. Hiring an arbitrator who was a former employee of Travelers and who,
- 16 upon information and belief, act in a biased manner toward the
- 17 Plaintiff's claim;
- 18 d. Knowingly or recklessly lowballing the Plaintiff; and/or;
- 19 e. Knowingly or recklessly requiring the Plaintiff to litigate her claim;
- 20 f. Knowingly or recklessly seeking attorneys' fees from the Plaintiff
- 21 when she attempted to litigate her claim in Federal Court;
- 22 g. Requiring the Plaintiff to jump through procedural and adversarial
- 23 hoops in order to get the rightful benefits to her claim; and
- 24 h. Other acts which may be discovered during the pendency of this case.

25 32. That Travelers' conduct in delaying the payment of full policy limits of \$100,000  
26 is an unreasonable act that ultimately caused damage, both direct and

1 consequential, to the Plaintiff, including ruination of credit, damage to credit  
2 reputation and forcing the Plaintiff to use credit cards and seek family loans to  
3 make ends meet during the delay.

4 33. That Travelers, has consciously disregarded the likelihood that it would harm  
5 Plaintiff by its actions and constitutes conduct entitling Plaintiff to an award of  
6 punitive damages.

7 WHEREFORE, the Plaintiff, having fully averred their complaint pray for  
8 judgment to be entered in their favor and against Travelers as follows:

- 9 1. For all special damages incurred;
- 10 2. For all general damages incurred;
- 11 3. For all consequential damages incurred;
- 12 4. For interest under A.R.S. § 20-462.
- 13 5. For punitive damages;
- 14 6. For reasonable attorneys' fees and costs to be paid pursuant to A.R.S. §  
15 12-341.01; and
- 16 7. For such other and further relief as this Court deems proper in the  
17 premises.

18 DATED this 6<sup>th</sup> day of September, 2017.

19 SURRANO LAW OFFICES

20  
21 By: 

22 Charles J. Surrano, III  
23 John N. Wilborn  
24 Attorneys for Plaintiff  
25  
26